HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

Writ Petition No.8258 of 2002

Between:

K. Ramulu

..Petitioner

And

The Union of India,
Represented by its Deputy Secretary,
Ministry of Home Affairs,
Loknayak Bhavan (Hyderabad F.F. Cell),
New Delhi and another.

..Respondents.

:ORDER:

Counsel for the petitioner : Shri A. Rajendra Babu for Shri Subba Rao Korrapati

Counsel for respondent No1 : Shri A. Rajashekar Reddy, Assistant Solicitor General.

Counsel for respondent No.2 : Government Pleader for Revenue

October 10, 2006:

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This is the third round of litigation by the petitioner in the matter of grant of pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (for short 'the 1980 Scheme').

Writ Petition No.27522 of 1998 filed by the petitioner for issue of a Mandamus to the respondents to sanction pension in his favour was disposed of by the learned single Judge with a direction to the respondents to consider and decide his application in the light of the recommendations made by the State Government. The second writ petition filed by him, which was registered as W.P.No.8366 of 2001, was disposed of by another learned single Judge with the direction to decide his claim within a period of eight weeks.

It is borne out from the record that the claim made by the petitioner for grant of pension under the 1980 Scheme was rejected by the competent authority vide letter dated 20-01-2000. Notwithstanding this, the Government of India, in compliance of the direction given by the learned single Judge in W.P.No. 8366 of 2001, reconsidered the petitioner's prayer for grant of pension under the 1980 Scheme and rejected the same. This was conveyed to the petitioner vide letter dated 19-07-2001.

The petitioner has questioned the decision contained in letter dated 19-07-2001 by contending that the reason assigned by the Government of India for treating him ineligible is legally unsustainable. In the affidavit filed by him, the petitioner has averred that he had participated in the movement launched against Nizam Government and with a view to avoid execution of the arrest warrant issued by the competent authority, he had remained underground for more than six months.

In the counter filed by Shri S.D. Kaushik, Under Secretary in the Ministry of Home Affairs, Government of India, it has been averred that the petitioner's claim was repeatedly considered by the competent authority and rejected because the evidence produced by him was not treated sufficient for treating him as a freedom fighter.

I have heard learned counsel for the parties. Paragraph No.9 of the counter affidavit filed on behalf of respondent No.1, which contains reason for refusal of the Government of India to entertain the petitioner's claim for grant of pension, reads as under:

> (a) That in the instant petition the main contention of the petitioner is to quash the speaking order dated 19.7.2001 vide which the claim of the petitioner was rejected. That the facts of the case, in brief, are that the pension application of the petitioner duly recommended by the State Government was received in the respondent Ministry on 30.3.1992. The same was examined and found incomplete, therefore, referred to the State Government vide letter dated 16.6.1994 requesting them to produce certain documents and

clarification. The petitioner filed Writ Petition No. 27522/98 and the Hon'ble Court vide its order dated 5.11.1998 directed the respondent to consider his claim. The claim of the petitioner was considered and rejected vide speaking order 22.1.1999. The petitioner was also informed inter-alia by the said speaking order that his case would be considered after receipt of requisite clarification from the State Government. The petitioner filed Contempt Petition No. 169/99 before this Hon'ble Court which was closed by the court order dated 14.6.1999. In the mean time the report of the State Government was also received. On the basis of the said report the case of the petitioner was reconsidered and Identification documents were called from the petitioner. Later the case of the petitioner was reviewed and the two reports of the State Government were found at variance. The provisions of the Hyderabad Defence Act were also analysed and the earlier translation of Urdu document provided by the State Government was found different with the later one which was also provided by the State Government. It was also found that the petitioner is not eligible for grant of pension under the Hyderabad Defence Act. In view of this, the State Government was requested vide letter dated 22.11.1999 to reconsider the matter and apprise the respondent Ministry about their views if they have any dissenting views. Annexed hereto is a copy of letter dated 22.11.1999 at Annexure R-II. When no reply was received from the State Government the case of the petitioner was rejected vide speaking order dated 20-1-2000 under intimation to the State Government. Copy of the said order is enclosed at Annexure R-III. Thereafter the petitioner filed the Writ Petition No. 8366/2001 and the Hon'ble High Court has directed the respondent to consider his claim. Accordingly his case was considered and rejected again vide speaking order dated 19.7.2001. Now the petitioner has filed the instant

petition praying to quash the speaking order dated 19.7.2001.

(b) That with respect to contentions raised in the para 2 of the Writ Petition, it is submitted that the six months jail suffering of the petitioner has not been proved for the reasons stated in speaking order dated 19.7.2001 and 20.1.2000. With reference to the contention of the petitioner that his case was recommended by the State Government, it is submitted that the State Government has failed to respond to this Ministry's letter dated 22.11.1999. Further the recommendation of the State Government is not binding on the Central Government. This view was also upheld by the Hon'ble High Court of Patna in C.W.J.C. No. 8665/97, in the case of Kishori Singh Vs. Union of India & Others, vide judgment dated 8.1.1999.

(c) That the averments raised in para 3 are admitted to the extent that the Identification Documents were called for from the petitioner on the basis of the State Government report which was received in the respondent Ministry simultaneously with the contempt petition filed by the petitioner. It is, however, submitted that later the case of the petitioner was reviewed and the two reports of the State Government were found at variance. Therefore, the State Government was requested vide letter dated 22.11.1999 to reconsider the matter and apprise the respondent Ministry about their views if they have any dissenting views (Annexure R-II). When no reply was received from the State Government the case of the petitioner was rejected vide speaking order dated 20.1.2000 under intimation to the State Government. (Annexure R-III).

(d) That in view of the submission made in preceding paras no further reply is required. It may be observed that the speaking order dated 19.7.2001 passed by the respondent is justified and sustainable in law. The said speaking order has been passed in accordance with the

provisions of the Swatantrata Sainik Samman Pension Scheme after considering the facts of the case carefully and with proper application of mind. The respondent Ministry is, however, ready to reconsider the matter in case any clarification in letter dated 22.11.1999 is received from the State Government.

(e) That in view of the submissions made in preceding paras the petitioner is not eligible for grant of Swatantrata Sainik Samman Pension.

Clause 2.3 of the 1980 Scheme, which has bearing on the decision of the petitioner's claim, reads as under:

"2.3 **Underground**:- A person who on account of his participation in freedom struggle remained underground for more than Six months provided he was;

A. A proclaimed offender; or
B. One on whom an award for arrest was announced; or
C. One for whose detention, order was issued but not served.

Explanation: Voluntary underground suffering of self-exile suffering for party work under the command of the party leaders, are not covered as eligible sufferings for pension under the Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence:--

(1) Documentary evidence by way of Court's/Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. OR

(2) Where records of the relevant period are not available, a non-availability of records certificate **(NARC) from the concerned State/Union territory Administration** along with a Personal knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of

a minimum two years and who happened to be from the same administrative unit.

Gist of relevant Circulars/Instructions issued by the Govt. of India under the Scheme regarding claims based on 'Underground/Abscondence' is given in Appendix B-II."

A reading of the above reproduced clause of the 1980 Scheme makes it clear that a person who applies for freedom fighters pension by claiming that he remained underground for more than six months has to establish that he went underground after being declared a proclaimed offender or to avoid execution of the order of detention or that the competent authority had announced award for his arrest. The type of evidence which can be produced by the claimant is also specified in Clause 2.3 of the 1980 Scheme.

The petitioner could have substantiated his claim for grant of freedom fighters pension by showing that he remained underground for more than six months after being declared a proclaimed offender or with a view to avoid execution of the order of detention or by showing that the competent authority had announced award for his arrest necessitating his going underground. However, the fact of the matter is that he did not produce any such evidence and felt contended by relying on the report of the District Collector, which was forwarded by the State Government to the Government of India.

In my opinion, the report of the District Collector cannot be made basis for accepting the petitioner's plea for being treated as a freedom fighter because the same is not supported by any

tangible evidence. For the reasons best known to him, the petitioner has neither referred to nor produced any evidence to show that he had been declared as a proclaimed offender or that an order of his detention was issued or that the competent authority had announced award for his arrest and, on that account, he had remained underground. Therefore, it is not possible to entertain his prayer for quashing communication dated 19-07-2001 or for issue of a mandamus to the respondents to sanction freedom fighters pension to him.

In the result, the writ petition is dismissed. However, liberty is given to the petitioner to produce tangible evidence before the State Government with the request to re-forward his case for consideration by the Government of India. If the petitioner is able to produce such evidence and the State Government forwards his case, then the Government of India shall reconsider his case for sanction of pension under the 1980 Scheme.

G.S. SINGHVI, CJ

10-10-2006
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